IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 1079 (SS) 2006.

Smt. Kamla Devi Bisht
W/o late Sri H.C. Chandra Bisht,
Village Gadera P.O. Jabukathal,
District Pithoragarh. .....Petitioner.

Versus

1. Border Security Force,
   Through Director General, New Delhi,
2. Additional D.I.G.,
   Border Security Force (General),
   F.T.R. H.Q. Border Security Force,
   Flaura Camp, Jammu,
3. Commandant HQ 12 Battalion,
   Border Security Force (W),
   Firozpur Punjab. .....Respondents.

Sri Shrad Sharma, learned counsel for the petitioner,
Sri Arvind Vashishtha, learned Asstt. Solicitor General for Union of India/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sharad Sharma, learned counsel for the petitioner and Sri Arvind Vashishtha, learned Asstt. Solicitor General for Union of India/ respondent nos. 1 to 3.

By means of this writ petition, the petitioner have prayed for the following reliefs:-

i. Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the death cum retirement gratuity amounting to Rs. 23,710/- to the petitioner alongwith the interest @ 18% which is wrongfully withheld by the respondents,

ii. Issue a writ, order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case,

iii. Award the cost of the petition.

Submission of the learned counsel for the petitioner is that husband of the petitioner who was serving as Head Constable in Border Security Force was killed by the terrorists in the State of Jammu and Kashmir on 12th February 1995. The respondent no. 1 i.e. the Director General, Border Security Force, New Delhi on 13.10.1995 prepared a Draft in regard to the death-cum-retirement gratuity to be paid to the petitioner, however the said amount was embezzled by the office of respondent no. 1 and the same was not paid to the petitioner. The petitioner made requests to the Director General for making payment of the amount of death-cum-retirement gratuity, which was sanctioned by the Director General, but no heed was paid towards it, consequently the petitioner constrained to file the present writ petition.

It is further submitted that after making several requests, a sum of Rs. 23,000/- was paid to her, however the rest of the amount has yet not been paid to the petitioner.

A counter affidavit has been filed by the respondents wherein para-3 and 7, the respondents have submitted as under:-

" That with regard to the contents of paragraph no. 1 of the writ petition, it is submitted that the DCRG amounting to Rs. 42,092/- and not Rs. 2,23,710/-in respect of Smt. Kamala Devi Bisht wife of Late H.C. Chandra Shekhar Bisht was admissible and required to be paid. No. 83102175 Ex ASI (CLK) A.S. Kangore who performed the duties of

Cashier from 21.01.1994 to 19.05.1996 embezzled/ misappropriated the Death Cum Retirement Gratuity (DCRG) amounting to Rs. 42,092/- and Rs. 27,566/-{ Rs. 18,382/- and Rs. 9,184/-} had already been paid to Smt. Kamala Devi Bisht vide Bank Draft bearing no. 447010 dated 16.02.2005 & Bank Draft no. 875354 dated 11.07.2006 respectively after recovering the amount from the Pay & allowances and final payment of Ex ASI (CLK) A.S. Kangore and remaining amount of Rs. 14,526/- is only to be payable to Smt. Kamala Devi."

" That in reply to the contents of para no. 6 of the writ petition it is submitted that after writing letter to SBI Hari Market Jammu (J&K), it was noticed that on 1.8.1995 a bank draft bearing No. 692733 dated 12.7.1995 for Rs. 42,095/- was received from Pay & Account Division, Border Security Force, New Delhi by this office at Fatikchera (Tripura) on account of Death Cum Retirement Gratuity (DCRG) payment in respect of Smt. Kamala Devi Bisht wife of late Chandra Shekhar Bisht. On receipt of above caption bank draft encashed by the Unit cashier ASI (CLK) A S Kangore without entering same into Cash book/Unit records and was embezzled/misappropriated by ASI (CLK) A S Kangore. A departmental inquiry was conducted against Ex ASI (CLK) A S Kangore vide DIG BSF Rajouri Sector..... As per remarks of the IG BSF Jammu, the amount of Rs. 42,092/- was required to be recovered from the Pay & allowance of ASI (CLK) A S Kangore and paid to Smt. Kamala Devi Bisht, accordingly Rs. 18,382/-+9,184/-, total Rs. 27,566/- have been recovered from the Pay & allowances of ASI (CLK) A S. Kangore. A balance of Rs. 14,526/- only which are required to be paid. In this connection, a Civil Suit titled UOI, vs. Ex ASI (CLK) A S Kangore was filed before Hon'ble District Court, Bhaderwah, Distt. Doda (J&K).....The Civil Suit has been allowed in favour of Union of India. Case for obtaining sanction of the competent authority for drawl of embezzled/ mis-appropriated amount of Rs. 2,14,526/- from the Govt. fund for further payment to NOKs sent to FHQ BSF New Delhi {ADM Dte} vide Ftr HQrs BSF Punjab vide their L/No. Acctt./BS (Mic)/2006/10771-72 dated 13.03.2006."

It is not disputed that a sum of Rs. 14,526 /- towards the balance amount of death-cum-retirement gratuity has not been paid to the petitioner till date. The respondents fell in default on

their part in not making payment of the balance amount of death-cum-retirement gratuity on account of embezzlement of the amount made by the office of the respondent no.1 to which the petitioner has nothing to do, even if the suit was filed by the respondents against the delinquent employee, who has embezzled the amount.

In the circumstances narrated above, I deem it proper and justified to direct the respondent no. 1 to make payment of the balance amount of death-cum-retirement gratuity to the petitioner within the period specified by this Court.

Accordingly, I direct the Director General, Border Security Force, New Delhi/ respondent no. 1 to make payment of Rs. 14,526/- to the petitioner which has been withheld by the respondents towards the death-cum-retirement gratuity of late HC Chandra Shekhar Bisht, within a period of three months from the date of production of a certified copy of this order alongwith interest @ 8% thereon w.e.f. 13.10.1995 till the date the entire payment is made to the petitioner.

With these directions, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

December 8, 2006:
NCM: